
(2009) 05 RAJ CK 0053
In the Rajasthan High Court

Mahesh

APPELLANT

Vs

Moorti Mohanji Maharaj Lahoti Wale and Others

RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2009) 05 RAJ CK 0053

Hon'ble Judges : J.R. Goyal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jitendra Ray Goyal, J.—This second appeal u/s 100 of the CPC has been filed by the defendant Mahesh against the judgment and decree dated 2/12/2008 passed by Additional District Judge No. 1, Bharatpur in Civil Regular Appeal No. 7/2002 by which he dismissed the appeal filed by the defendant-appellant and upheld the judgment and decree dated 22/1/2002 passed by Additional Civil Judge (Senior Division) No. 1, Bharatpur in Civil Suit No. 04/79 (170/95) whereby he decreed the suit filed by the plaintiff for eviction and recovery of rent.

2. Brief facts of the case are that the plaintiff filed a suit for eviction and recovery of rent against the defendants with the averments that the plaintiff is an idol and the same has been registered under the Rajasthan Public Trust Act, 1959; that the suit property is in the tenancy of Ganga Sahay and Jaina, both sons of Shri Mukundi, for Rs. 2/- per month. It has also been narrated that Ganga Sahay and Jaina had already expired and the defendants are the legal heirs of Ganga Sahay and Jaina; that the rent of the suit property has been deposited by Shri Jaina upto August, 1973 and thereafter no rent was paid to the authorized Mahant nor to the Devsthan department. It was further mentioned that charge of day to day affairs and management of the temple was taken by the government w.e.f. 15/9/1966 and Devsthan department was recovering the rent of all the suit properties of the temples but the State Government vide order dated 20/4/1974 gave the management and all the rights of movable and

immovable properties of the temple to the Mahant Shri Kanhaiya Lal and from that day he is managing all the temple properties and also recovering the rent. It was further averred that defendants No. 5 to 9 demolished the house and shop of the plaintiff and Pakka unauthorized and illegal construction has been raised. It was also the case of the plaintiff that defendants denied the ownership of the plaintiff and the shop in dispute has been sublet by the defendants, therefore plaintiff also sought the decree on the ground of denial of title and subletting.

3. Defendants No. 1 to 4 filed separate written statement denying the averments made by the plaintiff in the plaint and mentioned that Mahant has no right to file a suit on behalf of the idol and also has no right of the management of the property of the temple. It was also the case of the said defendants that disputed property was never given to Shri Ganga Sahay and he is not in possession over the property in dispute as a tenant.

4. In the separate written statement filed by the defendants No. 5 to 9, averments of plaint have been denied. It was mentioned that agreement to sell was executed between Jay Narayan, father of the defendants and Devasthan department and the said property was sold to the defendants for a consideration of Rs. 3000/-, out of which defendants No. 5 to 9 have already deposited Rs. 750/-, hence part payment has already been made and they are ready to make the remaining payment to the Devasthan department.

5. Issues were framed, evidence was recorded and after hearing the parties the trial court decreed the suit on the ground of default and material alteration. In turn the first appellate court also dismissed the appeal filed by the appellant-defendant Mahesh. Hence, this second appeal.

6. Heard learned Counsel for the parties on the point of admission.

7. It was inter alia contended that Devasthan department is the owner of the disputed property who offered and sold the said property to Jai Narayan, father of the defendants No. 5 to 9 for the consideration of Rs. 3,000/-. It was further submitted that Rs. 750/-, 1/4th of the sale price, have already been deposited and the appellant is prepared to deposit the remaining amount, in these circumstances, now he is not the tenant but virtually the owner of the disputed property. It was then submitted that Mahant Kanhaiya Lal has no locus standi to file the present suit.

8. Learned Counsel appearing for the respondents submitted that it has been amply proved that predecessors of the respondents were the tenants of the disputed premises and it has also been proved that from 1966 to 1974 the State Government took over the management of the plaintiff's temple property and on 20/4/1974 the property and the management of the temple has been entrusted to the Mahant Kanhaiya Lal, therefore, he rightly filed the suit on behalf of the plaintiff temple Murti Mohanji Maharaj. It was then submitted that both the courts below have arrived at concurrent finding of the fact that defendants have committed default in making the payment as well as they have made material

alteration in the suit premises, therefore, the suit has rightly been decreed and the finding of fact cannot be interfered with, in second appeal.

9. I have considered the rival submissions made at the bar. The trial court and the first appellate court after due consideration of the entire evidence and the material available on the record arrived at the conclusion that respondents were the tenants in the suit shop, they have committed default in making the payment of rent and on account of non-payment of the rent and even after determination of the provisional rent their defence has also been struck off. There is also concurrent finding of fact on the point of material alteration in the suit property. I do not find any perversity or illegality in the said concurrent finding of fact arrived at by both the courts below. NO substantial question of law arises in this second appeal.

10. Consequently, this appeal along with the stay application is dismissed at the stage in limine.